IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8592 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAYA NAGAR PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8592 of 1990

MR YOGESH S LAKHANI for Petitioner No. 1-2

Mr.Desai, AGP for Respondent No. 1-2

MR KS NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/05/2003

ORAL JUDGEMENT

The present petition is preferred by the petitioners challenging the legality and validity of the

order, dated 12.7.90 passed by the Development Commissioner, Gujarat State in purported exercise of powers under section 179(2) of Gujarat Panchayats Act, 1961 whereby the Development Commissioner has directed the Panchayat to accept the lumpsum contribution towards the recovery of tax for the period from 1.4.87 to 31.3.90 and for recovery of tax after 1.4.91 he has left the matter to the rights of the parties for agreement or otherwise.

2. Mr.Mehta appearing for the Nagarpanchayat which is now Municipality has raised a larger issue regarding compelling the Gram Panchayat to enter into lumpsum contribution. However, he also submitted that it may not be necessary for the court to examine the said question at this stage because the order of the Development Commissioner which is passed against the then Nagarpanchayat is also on the comments and the report of the DDO, Junagadh which came to be submitted on 26.6.90 and no opportunity was given to the petitioners to meet with the comments of the DDO. He submitted that as per the statement made on page 16 of the petition the hearing took place before the Development Commissioner on 16th June 1990 and the written submissions were filed by the petitioners and thereafter the order is passed on 12.7.90 by the Development Commissioner and the Development Commissioner while passing the order has taken into consideration the aforesaid parawise comments/ report of the DDO behind the back of the petitioners and no opportunity has been given. Therefore, he submitted that the order is in breach of principles of natural justice.

3. On behalf of respondents Mr.Thakkar as well as Mr.Desai, Ld.AGP are not in a position to show that the order came to be passed by the Development Commissioner after giving opportunity of hearing to the petitioners upon the report of the DDO. However, the contention was that it may not be required in all cases to give opportunity of hearing to the Panchayat because in their submission the procedure is for inviting comments from the DDO and then to decide the matter.

4. Considering the above facts and circumstances, and perusal of the order it is apparent that the report of the DDO is submitted on 26.6.90 whereas the hearing was concluded on 16.6.90. After the hearing was concluded even if the Development Commissioner has to take into consideration the report of the DDO, then, in my view, it was obligatory on the part of the Development Commissioner to give opportunity of hearing or at least the opportunity to meet with the comments of the DDO to

the Nagarpanchayat. The petitioner is a Nagarpanchayat and local self-Govt and the revenue is by way of property tax or otherwise is the major source of income and when the Development Commissioner is exercising powers to compel the Gram Panchayat to enter into lumpsum contribution in lieu of tax I am of the opinion that the principles of natural justice should be extended to the minimum extent of giving reasonable and sufficient opportunity to the Gram Panchayat before its power of recovering tax is curtailed or rather controlled by the direction of entering into agreement for lumpsum contribution.

5. As observed earlier, since the Nagarpanchayat is not given any opportunity to putforward its case upon the report of the DDO who recommended for fixing the lumpsum contribution, in my view, ends of justice would be met if the petitioner-Nagarpanchayat is given opportunity to meet with the comments of the DDO dated 26.6.90 and thereafter the matter is heard afresh by the Development Commissioner for the period from 1.4.87 to 31.4.90.

6. As such there was no order of the Development Commissioner for the period from 1.4.90 to 31.3.91 for lumpsum contribution, but the contention of the petitioners as observed earlier in SCA No.7602/91 was that the present petition was pending before this court against the earlier decision of the Development Commissioner and hence no decision was taken by the Development Commissioner. Further, both sides have agreed that considering the peculiar facts and circumstances of the case the Development Commissioner may also decide regarding the amount of lumpsum contribution for the period from 1.4.90 to 31.3.91 also.

7. In view of the aforesaid discussion, I am of the view that the following directions shall meet with the ends of justice:

(i) That the order dated 12.7.90 passed by the Development Commissioner at annexure "A" is quashed and set aside on the ground of breach of principles of natural justice.

(ii) It is further directed that the Development Commissioner shall give opportunity of hearing to the petitioners to submit their reply or comments to the report of the DDO, Junagadh dated 26.6.90.

(iii) The Development Commissioner shall also hear the parties for the period from 1.4.87 to 31.3.90 and for the

subsequent period of 1.4.90 to 31.3.91 and shall decide afresh in accordance with law.

(iv) The Development Commissioner shall complete the hearing and render the decision as early as possible preferably within a period of four months from the date of receipt of writ of this court.

(v) Till the Development Commissioner finally decides the matter, further recovery of tax for the period from 1.4.87 to 31.3.91 shall remain stayed.

(vi) The rights of the parties shall be governed according to the order which may be finally passed by the Development Commissioner in accordance with law.

8. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

1.5.03 (JAYANT PATEL,J)